

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of MITCHELL SMITH, a/k/a  
MITCHEL SMITH, and MARY SMITH, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DONALD SMITH,

Respondent-Appellant,

and

JEANNIE DENISE GOODE and ROBERT GOODE,

Respondents.

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UNPUBLISHED

January 28, 2000

No. 218889

Wayne Circuit Court

Family Division

LC No. 98-369500

Before: White, P.J., and Sawyer and Griffin, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from a family court order terminating his parental rights to the minor children under MCL 712A.19b(3)(a)(ii) and (g); MSA 27.3178(598.19b)(3)(a)(ii) and (g). We affirm.

Because respondent-appellant did not raise a specific claim of inadequate notice under MCR 5.920 in the family court, we will review his argument to determine if he has shown plain error affecting substantial rights. See *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

We decline to address the due process issue alluded to in petitioner's brief because respondent-appellant has not briefed this constitutional question in either his original or reply brief. *Goolsby v Detroit*, 419 Mich 651, 655; 358 NW2d 856 (1984). However, we will consider respondent-

appellant's claim that proper notice under MCR 5.920 was not provided, because the court rule's notice requirements are generally the same as the statutory requirements, MCL 712A.12; MSA 27.3178(598.12) and MCL 712A.13; MSA 27.3178(598.13), and an order directed to a parent is not binding if statutory notice is not provided. MCL 712A.18(4); MSA 27.3178(598.18)(4). See also *In re Adair*, 191 Mich App 710, 713-714; 478 NW2d 667 (1991); *In re Brown*, 149 Mich App 529; 386 NW2d 577 (1986) (lack of statutory notice is a jurisdictional defect).

We hold that respondent-appellant has not shown that the family court lacked authority to bind him to the termination order. In reaching this conclusion, we find it unnecessary to decide whether the family court complied with its obligation to determine if personal service was impractical, MCL 712A.13; MSA 27.3178(598.13), or if reasonable efforts were made to determine respondent-appellant's whereabouts, MCR 5.920(4)(c), before service by publication was authorized for the amended petition, because petitioner was only required to prove one statutory ground for termination. Although proper service of the amended petition was necessary for petitioner to seek termination based on the newly alleged statutory subsection, § 19b(3)(a)(ii), it was not necessary with regard to § 19b(3)(g), because the original petition sought termination under this subsection and no deficient notice relative to the original petition is claimed. Cf *In re Sours*, 459 Mich 624, 639 n 3; 593 NW2d 520 (1999). Hence, the hearing held on February 26, 1999, relative to subsection (g) was not the equivalent of a new hearing requiring additional personal service of notice. Cf *In re Andeson*, 155 Mich App 615, 618; 400 NW2d 330 (1986), and contrast *In re Atkins*, 237 Mich App 249; \_\_\_ NW2d \_\_\_ (1999). The subsequent notice standards found in MCR 5.920(F) were sufficient, because respondent-appellant had already appeared. Further, we find that respondent-appellant has not demonstrated any deficiency under MCR 5.920(F).

We also hold that respondent-appellant has not demonstrated that the referee clearly erred in finding that § 19b(3)(g) was established by clear and convincing evidence. MCR 5.974(D) and (I); *In re Sours*, *supra* at 633; *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). It is unnecessary to determine whether termination was also warranted under § 19b(3)(a)(ii), because this question is not necessary for a proper resolution of this appeal. Finally, we conclude that respondent-appellant failed to show that termination of his parental rights was clearly not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). Thus, we uphold the termination order entered by the family court judge based on the referee's recommendation. Petitioner's request for relief under MCR 7.215(E) is denied.

Affirmed.

/s/ David H. Sawyer  
/s/ Richard Allen Griffin